

STATE OF IOWA  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS BOARD

CITY OF CEDAR RAPIDS,  
Public Employer,

and

CEDAR RAPIDS ASSOCIATION OF  
FIREFIGHTERS, LOCAL 11,  
INTERNATIONAL ASSOCIATION OF  
FIREFIGHTERS,  
Certified Employee  
Organization.

CASE NO. 4701

STATE OF IOWA  
PUBLIC EMPLOYMENT  
RELATIONS BOARD  
MAY 11 AM 4:27

RULING ON MOTION<sup>1</sup>

On May 1, 1992, the Cedar Rapids Association of Firefighters, Local 11, International Association of Firefighters (the Association) filed a motion to dismiss the instant negotiability proceeding with the Public Employment Relations Board (PERB or Board).

It appears that during a fact-finding hearing on April 1, 1992, the City of Cedar Rapids, Iowa (City) objected to the negotiability of certain proposals advanced by the Association and requested the factfinder seek an expedited negotiability ruling concerning those proposals pursuant to PERB subrule 6.3(2). The City's written objections and request set forth the entirety of the four proposals at issue.

On April 6, 1992, the factfinder wrote PERB, requesting expedited negotiability rulings on the proposals at issue, attaching a copy of the City's objections and request to his

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<sup>1</sup>The Board orally advised the advocates for each party of the Board's ruling on this motion by telephone on the morning of May 11, 1992. This writing thus memorializes that previously-rendered ruling.

correspondence and setting forth the names and addresses of the representatives who had appeared on behalf of the parties at the fact-finding hearing.

Although copies of the factfinder's correspondence were mailed to those representatives by the factfinder, it appears that no copy of the attachment which was provided to PERB was included in the mailing to the representatives. Neither the Association's president nor its secretary received a copy of the factfinder's correspondence.

The Association argues that the requirements of PERB subrule 6.3(2) concerning the content and service of petitions for resolution of negotiability disputes were not met by the factfinder, and that PERB thus possesses neither jurisdiction over the dispute's subject matter nor in personam jurisdiction over the Association.

PERB subrule 6.3(2) provides, in relevant part:

6.3(2) *Expedited resolution.* In the event that a negotiability dispute arises between the employer and the certified employee organization, either party may petition the board for expedited resolution of the dispute. The petition shall set forth the material facts of the dispute, the precise question of negotiability submitted for resolution, and certification of service upon the other party. The parties shall present evidence on all issues to the factfinder or arbitrator, including the issue which is the subject of the negotiability dispute. A negotiability dispute raised at the fact-finding hearing shall be upon objection to the submission of the proposal to the fact-finder or arbitrator. The objection shall request the factfinder or arbitrator to seek a negotiability ruling from the board regarding the proposal or state that the objecting party will file a petition for resolution of the dispute with the board. . . . Arbitrators and fact-finders shall rule on all issues submitted to them including the issue which is the subject of the negotiability dispute unless explicitly

stayed by the board. Arbitration awards and factfinder's recommendations issued prior to the determination of the negotiability dispute will be contingent upon that determination.

We need not address the issue of whether this subrule's provisions concerning the content of a party's petition and its service are mandatory, jurisdictional prerequisites or merely directory provisions designed to assure order in the proceedings, for we think that the subrule's petition-content and service provisions are inapplicable to negotiability rulings sought by factfinders upon the written request of one of the parties.

While subrule 6.3(2) provides that either party involved in a negotiability dispute may petition the Board for its expedited resolution, and then sets out what such a petition shall contain, including a certificate of service upon the other party, the subrule neither specifies the content of a request for a negotiability ruling relayed by a factfinder, nor does it provide for the request's service upon the parties. We think there is a good reason for the absence of such provisions.

When a dispute over a proposal's negotiability arises prior to fact-finding and a party directly seeks a resolution of the dispute, subrule 6.3(2)'s provisions concerning the content and service of the party's petition serve the necessary function of providing the other party with notice of the scope and pendency of the negotiability proceeding. Such notice concerns are absent, however, in cases where the dispute is first raised at the fact-finding hearing and the factfinder seeks the negotiability ruling from PERB. In such cases both parties are present when the dispute

is raised and the objection(s) to the questioned proposal(s) are presented in writing, as is the request that the factfinder seek the negotiability ruling. The non-objecting party is thus immediately notified of the scope of the dispute and of the fact that the factfinder will be seeking its resolution by the Board.

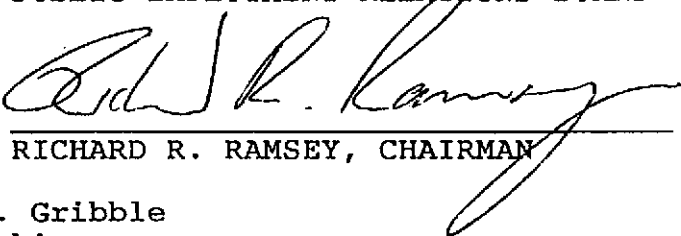
We conclude that the provisions of PERB subrule 6.3(2) concerning the content of a party's petition for expedited resolution of a negotiability dispute and the service of such a petition are inapplicable to requests for negotiability rulings sought by a factfinder upon a subrule 6.3(2) written request of one of the parties. Since those provisions were inapplicable to the factfinder's request to PERB, no non-compliance with subrule 6.3(2) has been established which would affect the Board's jurisdiction over either the subject matter of the dispute or the parties to the proceeding.

IT IS THEREFORE ORDERED that the Association's motion to dismiss the instant proceeding for expedited resolution of the parties' negotiability dispute be and is hereby DENIED.

DATED at Des Moines, Iowa this 11th day of May, 1992.

PUBLIC EMPLOYMENT RELATIONS BOARD

By:

  
RICHARD R. RAMSEY, CHAIRMAN

Mail copies to: Charles E. Gribble  
Judith Perkins